68 (1880), cited by the court to support its decision is plainly distinguishable. There the owner made fraudulent representations to the defendant in ejectment, and was held estopped. Nor does the *Ry. Co.* v. *Jones*, 68 Ala. 49 (1880), likewise cited by the court, decide this point. The case simply holds that though a railroad company, before exercising its right of eminent domain, must make the owner compensation, the owner may waive this condition, and that if he knowingly permits the company to enter and lay its tracks without objection, he will be held to have so waived it.

But *in equity*, if one whose land has been improved seek relief, it will be granted to him only on his paying the value of the improvements made in good faith. *Smith* v. *Drake*, 8 C. E. Gr. 302 (N. J. 1873). And in some cases the party making the improvements has been given affirmative relief, by making the value of his improvements a lien upon the land. *Bright* v. *Boyd*, 1 Story, 478 (1840); *contra*, *O'Conner* v. *Hurley*, 147 Mass., 145 (1888).

RIPARIAN RIGHTS AS PROPERTY IN NEW YORK.—The nature of the interest which riparian proprietors possess has been the subject of much diversity of opinion. Private title to lands abutting on navigable streams ends at high water-mark, and the title to the tideway—the shore between high and low water-marks—vests in the State as trustee for the people. The owner of abutting property possesses those rights of access to the stream, which are commonly called riparian rights, to use and enjoy in proper subjection to the right of the public. In a recent case—*In re City of New York*, 61 N. E. 158 (N. Y. Oct. 1901)—it was held that riparian rights are property, and that when these were appropriated by the City of New York in the construction of a driveway, the owner is entitled to due compensation.

Riparian rights have not always been regarded as property, even in New York. The early case of *Lansing* v. *Smith*, 8 Cowen, 146 (1828), decided that they could be appropriated without any compensation to the abutting property owners, within the meaning of the seventh section of Article VII of the State Constitution, providing "that private property shall not be taken for public use without just compensation." This doctrine was applied and extended by *Gould* v. *Ry. Co.* 6 N. Y. 522 (1852), which decided that the owner of property abutting on a navigable stream was entitled to no compensation for the appropriation of his riparian rights by a railroad company in the construction of its road. That riparian rights are *not* property may be regarded as the well-established law in New York at that date. This doctrine was not long acquiesced in, however, and was severely criticised by a long line of decisions from the *Story* case, 90 N. Y. 125 (1882), to *Kane* v. *R. R.*, 125 N. Y. 184 (1891). A later case—*Rumsey* v. *R. R.*, 133 N. Y. 79 (1892)—directly overruled the *Gould* case, and held that riparian rights are property. In the words of Mr. Justice MILLER, quoted with approval in that case, "This riparian right is property, and

though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired." But the case of *Lansing* v. *Smith*, *supra*, was distinguished and approved on the ground that there the riparian rights were appropriated by the State for the improvement of navigation. The effect of this decision was to recognize riparian rights, as property, when appropriated by a quasi-public corporation, but not when taken by the public for its use. This doctrine was cited with approval in *Sage* v. *Mayor*, 154 N. Y. 681 (1897). The Court in that case, while recognizing that due compensation must be made the owner whose riparian rights are appropriated by a railroad, allowed no compensation when they were taken by the State. The reasoning was that in every grant by the State, as trustee for the people, of land bounded by navigable rivers, there is an implied reservation of a right in the State to improve water fronts in the interest of navigation, without compensation to the grantee. These principles were recognized again *In re City of New York*, *supra*, but were confined within the narrow limits of the *Sage* case; that is, riparian rights cannot be appropriated, even by the public for any other purpose than the improvement of navigation, without due compensation to the owners.

Had the doctrine of the *Gould* case been followed to its logical conclusion, though this would have worked hardship and injustice, compensation must have been denied to abutting property owners for the loss of their riparian rights in all these cases. Such is the position of the United States Supreme Court and several of the State courts (see 1 COLUMBIA LAW REVIEW, 121). The *Gould* case and *Lansing* v. *Smith*, stand for the same principle, and when the former was overruled, the latter should have fallen too. Thus the *Rumsey* case introduced an anomaly into real property law; by its holding riparian rights *are* property for certain purposes within the meaning of that term in the Constitution, but for other purposes riparian rights are *not* considered property. In other words: Riparian rights, when appropriated by quasi public corporations or individuals, or by the State for the improvement of highways for vehicles are property, for which compensation must be given; when appropriated by the State for the improvement of highways for boats, riparian rights are not property and no compensation is due.

Nor can this result be justified on the theory of an implied reservation in the State's grants of the privilege of resuming these riparian rights without compensation. As a matter of fact, such a reservation cannot be inferred from the content of these grants, and the courts cannot read it into the grants, on the ground of preventing hardship to one of the parties, for in practice to do so works hardship and injustice to the weaker party. All effort to reconcile these elements of inconsistency proving futile, riparian rights must still be regarded as occupying an anomalous position in New York law.